

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

MERCK & CO., INC.,	)	
	)	
Plaintiff and Counterclaim Defendant,	)	
	)	
v.	)	C.A. No. 07-229 (GMS)
	)	
RANBAXY INC., and RANBAXY	)	
LABORATORIES LIMITED,	)	
	)	
Defendants and Counterclaim Plaintiffs.	)	

**PARTIES' REVISED JOINT CLAIM CONSTRUCTION CHART**

Attached hereto as Exhibit A is the parties' Revised Joint Claim Construction Chart for U.S. Patent No. 5,147,868. This revises the parties' Joint Claim Construction Chart (D.I. 33) filed on December 3, 2007.

MORRIS, NICHOLS, ARSH & TUNNELL LLP

*/s/ Mary B. Graham*

---

Mary B. Graham (#2256)  
 James W. Parrett, Jr. (#4292)  
 1201 N. Market Street  
 P.O. Box 1347  
 Wilmington, DE 19899-1347  
 302.658.9200

OF COUNSEL:

Raymond N. Nimrod  
 JENNER & BLOCK LLP  
 919 N. Third Avenue  
 37th Floor  
 New York, NY 10022-3908

Aaron A. Barlow  
 Gregory D. Bonifield  
 JENNER & BLOCK LLP  
 330 N. Wabash Avenue  
 Chicago, IL 60611-7603

*Attorneys for Merck & Co., Inc.*

RICHARDS, LAYTON & FINGER, P.A.

*/s/ Kelley E. Farnan*

---

Frederick L. Cottrell, III (#2555)  
 Kelly E. Farnan (#4395)  
 One Rodney Square  
 920 North King Street  
 Wilmington, DE 19801  
 302.651.7700

OF COUNSEL:

Mark Boland  
 Michael Dzwonczyk  
 SUGHRUE MION PLLC  
 2100 Pennsylvania Avenue, N.W.  
 Washington, D.C. 20037  
 202.293.7060

*Attorneys for Ranbaxy Inc. and  
 Ranbaxy Laboratories Limited*

Dated: December 11, 2007  
 1332743

# EXHIBIT A

**MERCK & CO., INC. v. RANBAXY INC. AND RANBAXY LABS. INC.**  
**CIVIL ACTION NO. 07-229 (GMS) (D. DEL.)**

**REVISED JOINT CLAIM CONSTRUCTION CHART**

**Agreed Construction<sup>1</sup>**

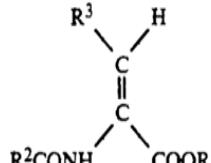
Claim Limitation	Claim at Issue	Construction
witho	22	with

**Asserted claims: 1, 2, 9, 19, 20, 22, 23, 24**

U.S. Patent No. <b>5,147,868</b>	Claims at Issue	MERCK		RANBAXY	
		CONSTRUCTION	INTRINSIC EVIDENCE	CONSTRUCTION	INTRINSIC EVIDENCE
“A compound”	1, 9	“A substance composed of atoms or ions of two or more elements in chemical combination.”	‘868 patent, Abstract, col. 1, lns. 20-43; col. 5, ln. 20 - col. 10, ln. 46; col. 19, lns. 35-67; col. 20, ln. 35 - col. 21, ln. 43; col. 38, ln. 9 - col. 40, ln. 40 (Claims 1-24);	“A compound” excludes a combination product containing the compound and a thienamycin-type compound.	‘868 patent, 8:43-51 and applications/patents cited therein and stemming therefrom; ‘868 patent, 5:20-9:45.

---

<sup>1</sup> The parties jointly and respectfully submit that, if the Court deems it appropriate, the Court include the agreed-upon claim construction in its Claim Construction Order, or in the alternative, that this agreed upon construction is a binding stipulation between the parties.

U.S. Patent No. 5,147,868	Claims at Issue	MERCK		RANBAXY	
		CONSTRUCTION	INTRINSIC EVIDENCE	CONSTRUCTION	INTRINSIC EVIDENCE
			U.S. Appl. Ser. No. 06/748,300 (6/5/86 Communication to the Examiner under 37 C.F.R. §1.56 enclosing Abstract and accompanying information from the ICAAC, Sept. 22-24, 1980).		
	1	This formula needs no construction. The formula defines the structure illustrated, which shows the Z-stereoconfiguration.	‘868 Patent, col. 1, ln. 45 - col. 5, ln. 11; A. Srinivasan et al. <i>Tetrahedron Lett.</i> , 891 (1976).	The formula includes racemates, mixtures, isomers, and enantiomers of the free acid form and salt forms of the compound, with the exception of the E-stereoisomer form.	'868 patent, 2:18-5:10, Table I, cols. 11-20 and Examples 1-23, Claims 1, 9, 19 and 20;  Application Ser. No. 06/465,577: Office Action dated February 24, 1984; Response under 37 C.F.R. §1.111 dated July 7, 1984; Office Action dated December 4, 1984;  Application Ser. No. 06/748,300, Office Action of February 24, 1985, Amendment dated

U.S. Patent No. 5,147,868	Claims at Issue	MERCK		RANBAXY	
		CONSTRUCTION	INTRINSIC EVIDENCE	CONSTRUCTION	INTRINSIC EVIDENCE
					<p>May 15, 1986, Communication to the Examiner under 37 C.F.R. §1.56, dated June 5, 1986; Ashton, <i>et al.</i> Abstract no. 271 and “poster session,” (ICAAC) Sept. 22-24, 1980;</p> <p>Application Ser. No. 06/878,391: Office Action dated Nov. 6, 1986; Amendment under 37 C.F.R. §1.116 received April 6, 1987;</p> <p>J. E. Blackwood <i>et al.</i>, <i>J. Am. Chem. Soc.</i>, 90, p. 509 (1968); A. Srinavasan <i>et al.</i> <i>Tetrahedron Lett.</i>, 891 (1976).</p>
pharmaceutically acceptable cation	1, 9	This term means “a cation acceptable for pharmaceutical use in connection with the	‘868 patent, col. 5, lns. 12-18; col. 34, lns. 10- 68; col. col. 38, lns. 9-66 (Claim 1); col. 39, lns.	Any cation useful in the salt form of the claimed pharmaceutical compound.	not defined ( <i>cf.</i> '868 patent, 1:60-5:19, cols. 11-20 (Table 1).

U.S. Patent No. 5,147,868	Claims at Issue	MERCK		RANBAXY	
		CONSTRUCTION	INTRINSIC EVIDENCE	CONSTRUCTION	INTRINSIC EVIDENCE
		claimed compounds.”	18-36 (Claim 9);  U.S. Appl. Ser. No. 06/188,178 (9/17/80 Application).		
R1 is hydrogen or a pharmaceutically acceptable cation;	1	This phrase as a whole needs no construction.  The phrase “R1 is hydrogen” needs no claim construction.  The term “pharmaceutically acceptable cation” is defined by the parties above.	‘868 patent, col. 1, ln. 45 - col. 2, ln. 45; col. 5, lns. 12-18; col. 38, lns. 10-66 (Claim 1).	R1 defines two mutually exclusive subgenera: (1) a free acid form in which R1 is hydrogen, and (2) salt forms in which R1 is a pharmaceutically acceptable cation.	‘868 patent 1:60-5:6, 5:11-19; 2:18-5:10, Table I, cols. 11-20 and Examples 1-23, Claims 1, 9, 19 and 20.
X	1	“X” needs no construction. The claim defines “X” to mean:  “unsubstituted or substituted branched or linear alkyl of three to	‘868 patent, col. 1, ln. 45 - col. 5, ln. 10; col. 10, ln. 45 - col. 38, ln. 8; col. 38, lns. 9-66 (Claim 1).	X includes at least:  a branched or linear alkyl group of four carbons substituted with a cycloalkyl group of six carbons ( <i>i.e.</i> , a	not defined ( <i>cf.</i> ‘868 patent, 1:60-5:19, cols. 11-20 (Table 1) and Examples 1-23).  Application Ser. No. 06/878,391: Office

U.S. Patent No. 5,147,868	Claims at Issue	MERCK		RANBAXY	
		CONSTRUCTION	INTRINSIC EVIDENCE	CONSTRUCTION	INTRINSIC EVIDENCE
		ten carbon atoms wherein a non-terminal methylene can be replaced by oxygen, sulfur or SO <sub>2</sub> , where said substituents are selected from the group consisting of halogen or cycloalkyl of three to six carbon atoms, with the proviso that, when said alkyl is substituted by said cycloalkyl, X is not more than ten total carbon atoms, with the further proviso that not more than six hydrogens of said alkyl can be substituted by said halogen, and with the further proviso that the carbon adjacent to the carbonyl cannot be tertiary;”		cyclohexyl group), a branched or linear alkyl group of five carbons substituted with a cycloalkyl group of five carbons ( <i>i.e.</i> , a cyclopentyl group), a branched or linear alkyl group of six carbons substituted with a cycloalkyl group of four carbons ( <i>i.e.</i> , a cyclobutyl group), and a branched or linear alkyl group of seven carbons substituted with a cycloalkyl group of three carbons ( <i>i.e.</i> , a cyclopropyl group).	Action dated Nov. 6, 1986; Amendment under 37 C.F.R. §1.116 received April 6, 1987; Office Action dated July 24, 1987; Amendment under 37 C.F.R. §1.116 dated Oct. 30, 1987; Office Action dated February 7, 1988; Amendment under 37 C.F.R. §1.116 dated May 24, 1988; Application Ser. No. 07/244,527: Preliminary Amendment dated January 23, 1989; Office Action dated March 14, 1990; Amendment dated August 6, 1980; Office Action dated October 12, 1990; Application Ser. No. 07/641,317: Preliminary Amendment dated Jan. 14, 1991; Office Action

U.S. Patent No. 5,147,868	Claims at Issue	MERCK		RANBAXY	
		CONSTRUCTION	INTRINSIC EVIDENCE	CONSTRUCTION	INTRINSIC EVIDENCE
					dated March 20, 1991; Amendment and Response dated September 23, 1981; Office Action dated December 9, 1991;  Application Ser. No. 07/839,725: Preliminary Amendment and Response dated Feb. 19, 1992; Examiner Interview Summary dated March 30, 1992; Notice of Allowability dated March 30, 1992.
Y	1	“Y” needs no construction. The claim defines “Y” to mean: “cycloalkyl of three to six carbon atoms, unsubstituted or substituted with one or two substituents where said substituents are	‘868 patent, col. 1, ln. 45 - col. 5, ln. 10; col. 10, ln. 45 - col. 38, ln. 8; col. 38, lns. 9-66 (Claim 1).	Y includes at least: cyclopropyl, cyclobutyl, cyclopentyl, and cyclohexyl, unsubstituted or substituted with one or two substituents including alkyl of one to four carbon atoms, provided that the total	not defined ( <i>cf.</i> ‘868 patent, 1:60-5:19, cols. 11-20 (Table 1) and Examples 1-23).  Application Ser. No. 06/878,391: Office Action dated Nov. 6, 1986; Amendment under 37 C.F.R. §1. 116 received April 6, 1987;

U.S. Patent No. 5,147,868	Claims at Issue	MERCK		RANBAXY	
		CONSTRUCTION	INTRINSIC EVIDENCE	CONSTRUCTION	INTRINSIC EVIDENCE
		selected from the group consisting of halogen or alkyl of one to four carbon atoms, with the proviso that, when said cycloalkyl is substituted by said alkyl, Y is not more than ten total carbon atoms;”		number of carbon atoms in substituted Y is not more than ten carbon atoms.	Office Action dated July 24, 1987; Amendment under 37 C.F.R. §1.116 dated Oct. 30, 1987; Office Action dated February 7, 1988; Amendment under 37 C.F.R. §1.116 dated May 24, 1988;  Application Ser. No. 07/244,527: Preliminary Amendment dated January 23, 1989; Office Action dated March 14, 1990; Amendment dated August 6, 1980; Office Action dated October 12, 1990;  Application Ser. No. 07/641,317: Preliminary Amendment dated Jan. 14, 1991; Office Action dated March 20, 1991; Amendment and Response dated September 23, 1981;

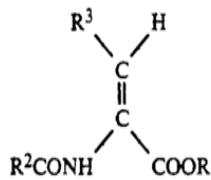
U.S. Patent No. 5,147,868	Claims at Issue	MERCK		RANBAXY	
		CONSTRUCTION	INTRINSIC EVIDENCE	CONSTRUCTION	INTRINSIC EVIDENCE
					Office Action dated December 9, 1991; Application Ser. No. 07/839,725: Preliminary Amendment and Response dated Feb. 19, 1992; Examiner Interview Summary dated March 30, 1992; Notice of Allowability dated March 30, 1992.
trialkylammonium, quaternary hydroxyalkyl- dialkylammonium, phosphonylalkyl- amino, hydroxyalkylami- no, alkylamidino, N,N-	1	The term "alkyl" means "a paraffinic hydrocarbon group which may be derived from an alkane by dropping one hydrogen from the formula." The term "alkyl" used as part of a larger chemical group or moiety has the meaning understood by persons of ordinary skill in the art in the context	'868 patent, col. 1, ln. 45 - col. 5, ln. 10; col. 21, ln. 44 - col. 23, ln. 23; col. 31, ln. 37 - col. 38, ln. 8; col. 38, lns. 9-66 (Claim 1).	Each alkyl group in each substituent includes a linear, branched, or cyclic alkyl group without limitation as to number of carbon atoms.	not defined ( <i>cf.</i> '868 patent, 1:60-5:6, cols. 11-20 (Table 1), and Examples 1-23); Claims 1, 9, 22). Application Ser. No. 06/878,391: Office Action dated Nov. 6, 1986; Amendment under 37 C.F.R. §1.116 received April 6, 1987; Office Action dated July 24, 1987; Amendment under 37 C.F.R. §1.116

U.S. Patent No. 5,147,868	Claims at Issue	MERCK		RANBAXY	
		CONSTRUCTION	INTRINSIC EVIDENCE	CONSTRUCTION	INTRINSIC EVIDENCE
dialkyguanidino, alkylcarbonyloxy, alkoxycarbonyl, N,N- dialkylcarbamoyl		of that larger chemical group or moiety.			dated Oct. 30, 1987; Office Action dated February 7, 1988; Amendment under 37 C.F.R. §1.116 dated May 24, 1988;  Application Ser. No. 07/244,527: Preliminary Amendment dated January 23, 1989; Office Action dated March 14, 1990; Amendment dated August 6, 1980; Office Action dated October 12, 1990;  Application Ser. No. 07/641,317: Preliminary Amendment dated Jan. 14, 1991; Office Action dated March 20, 1991; Amendment and Response dated September 23, 1981; Office Action dated December 9, 1991;

U.S. Patent No. 5,147,868	Claims at Issue	MERCK		RANBAXY	
		CONSTRUCTION	INTRINSIC EVIDENCE	CONSTRUCTION	INTRINSIC EVIDENCE
					Application Ser. No. 07/839,725: Preliminary Amendment and Response dated Feb. 19, 1992; Examiner Interview Summary dated March 30, 1992; Notice of Allowability dated March 30, 1992.
said one to fifteen carbon alkyl	1	“said two to fifteen carbon alkyl” (typographical error)	<p>'868 Patent, col. 38, lns. 9-66 (Claim 1);</p> <p>U.S. Appl. Ser. No. 07/244,527 (3/14/90 Office Action; 8/8/90 Amendment; 10/12/90 Office Action);</p> <p>U.S. Appl. Ser. No. 07/641,317 (1/14/91 Application; 1/14/91 Preliminary Amendment; 3/20/91 Office Action; 9/23/91 Amendment and Response; 12/9/91 Office Action; 1/28/92 Examiner Interview</p>	said one to fifteen carbon alkyl	<p>'868 patent, 1:55-61; 2: 11-17; 2:47-4:34; Table I, cols 11-20, compounds 2a, 2b, 2c, 3-11, 18-32, 34-38, 40, 42-44; Examples 2, 3, 4, 5, 6, 8, 9, 10, 16; Claim 1.</p> <p>Application Ser. No. 06/878,391: Office Action dated Nov. 6, 1986; Amendment under 37 C.F.R. §1.116 received April 6, 1987; Office Action dated July 24, 1987; Amendment under 37 C.F.R. §1.116 dated Oct. 30, 1987;</p>

U.S. Patent No. 5,147,868	Claims at Issue	MERCK		RANBAXY	
		CONSTRUCTION	INTRINSIC EVIDENCE	CONSTRUCTION	INTRINSIC EVIDENCE
		Summary Record);  U.S. Appl. Ser. No. 07/839,725 (2/19/92 Application; 2/19/92 Preliminary Amendment and Response; 3/26/92 Examiner Interview Summary Record; 3/30/92 Notice of Allowability).		Office Action dated February 7, 1988; Amendment under 37 C.F.R. §1.116 dated May 24, 1988;  Application Ser. No. 07/244,527; Preliminary Amendment dated January 23, 1989; Office Action dated March 14, 1990; Amendment dated August 6, 1980; Office Action dated October 12, 1990;  Application Ser. No. 07/641,317: Preliminary Amendment dated Jan. 14, 1991; Office Action dated March 20, 1991; Amendment and Response dated September 23, 1981; Office Action dated December 9, 1991;  Application Ser. No.	

U.S. Patent No. 5,147,868	Claims at Issue	MERCK		RANBAXY	
		CONSTRUCTION	INTRINSIC EVIDENCE	CONSTRUCTION	INTRINSIC EVIDENCE
					07/839,725: Preliminary Amendment and Response dated Feb. 19, 1992; Examiner Interview Summary dated March 30, 1992; Notice of Allowability dated March 30, 1992.
2,2-dimethylcyclopropyl	2, 9	This term needs no construction.  The term means “2,2-dimethylcyclopropyl.”	‘868 patent, col. 38, lns. 67-68 (Claim 2); col. 39, lns. 18-35 (Claim 9); col. 40, lns. 21-23 (Claim 19).	(S)-2,2-dimethylcyclopropyl, (R)-2,2-dimethylcyclopropyl, and mixtures thereof.	‘868 patent, 2:18-5:10, Table I, cols. 11-20, Examples 1-23; Application Ser. No. 06/748,300, Office Action of February 24, 1985, Amendment dated May 15, 1986, Communication to the Examiner under 37 C.F.R. §1.56, dated June 5, 1986; Ashton, <i>et al.</i> Abstract no. 271 and “poster session,” (ICAAC) Sept. 22-24, 1980; J. E. Blackwood et al., <i>J. Am. Chem. Soc.</i> , 90, p. 509 (1968);

U.S. Patent No. 5,147,868	Claims at Issue	MERCK		RANBAXY	
		CONSTRUCTION	INTRINSIC EVIDENCE	CONSTRUCTION	INTRINSIC EVIDENCE
					A. Srinivasan et al. <i>Tetrahedron Lett.</i> , 891 (1976).
	9	<p>This formula needs no construction. The formula defines the structure illustrated, which shows the Z-stereoconfiguration.</p>	<p>'868 Patent, col. 1, ln. 45 - col. 5, ln. 11; col. 38, lns. 10-66 (Claim 1); col. 39, lns. 18-36 (Claim 9);</p> <p>A. Srinivasan et al. <i>Tetrahedron Lett.</i>, 891 (1976).</p>	<p>The formula includes racemates, mixtures, isomers, and enantiomers of the free acid form, salt forms, and ester forms of the compound, with the exception of the E-stereoisomer form.</p>	<p>'868 patent, 2:18-5:10, Table I, cols. 11-20 and Examples 1-23, Claims 1, 9, 19 and 20;</p> <p>Application Ser. No. 06/465,577: Office Action dated February 24, 1984; Response under 37 C.F.R. §1.111 dated July 7, 1984; Office Action dated December 4, 1984;</p> <p>Application Ser. No. 06/748,300, Office Action of February 24, 1985, Amendment dated May 15, 1986, Communication to the Examiner under 37 C.F.R. §1.56, dated June 5, 1986; Ashton, <i>et al.</i> Abstract no. 271 and "poster session,"</p>

U.S. Patent No. 5,147,868	Claims at Issue	MERCK		RANBAXY	
		CONSTRUCTION	INTRINSIC EVIDENCE	CONSTRUCTION	INTRINSIC EVIDENCE
					(ICAAC) Sept. 22-24, 1980;  Application Ser. No. 06/878,391: Office Action dated Nov. 6, 1986; Amendment under 37 C.F.R. §1. 116 received April 6, 1987;  J. E. Blackwood et al., <i>J. Am. Chem. Soc.</i> , 90, p. 509 (1968); A. Srinavasan et al. <i>Tetrahedron Lett.</i> , 891 (1976).
R <sup>1</sup> is hydrogen, loweralkyl of 1-6 carbon atoms, dialkylaminoalkyl, or a pharmaceutically acceptable cation	9	This phrase as a whole needs no construction.  The phrase “R1 is hydrogen” needs no claim construction.  The term “loweralkyl of 1-6 carbon atoms” needs no construction.  The term	‘868 patent, col. 1, ln. 45 - col. 2, ln. 45; col. 5, lns. 12-18; col. 39, lns. 18-36 (Claim 9).	R <sup>1</sup> defines three mutually exclusive subgenera: (1) a free acid form in which R <sup>1</sup> is hydrogen, (2) ester forms in which R <sup>1</sup> is loweralkyl of 1-6 carbon atoms, or dialkylaminoalkyl, and (3) salt forms in which R <sup>1</sup> is a pharmaceutically	‘868 patent 1:60-5:6, 5:11-19; 2:18-5:10, Table I, cols. 11-20 and Examples 1-23, Claims 1, 19 and 20.  Application Ser. No. 06/878,391: Office Action dated Nov. 6, 1986; Amendment under 37 C.F.R. §1. 116 received April 6, 1987; Office Action dated July

U.S. Patent No. 5,147,868	Claims at Issue	MERCK		RANBAXY	
		CONSTRUCTION	INTRINSIC EVIDENCE	CONSTRUCTION	INTRINSIC EVIDENCE
		“dialkylaminoalkyl” needs no construction.  The term “pharmaceutically acceptable cation” is defined by the parties above.		acceptable cation.	24, 1987; Amendment under 37 C.F.R. §1.116 dated Oct. 30, 1987; Office Action dated February 7, 1988; Amendment under 37 C.F.R. §1.116 dated May 24, 1988;  Application Ser. No. 07/244,527: Preliminary Amendment dated January 23, 1989; Office Action dated March 14, 1990; Amendment dated August 6, 1980; Office Action dated October 12, 1990;  Application Ser. No. 07/641,317: Preliminary Amendment dated Jan. 14, 1991; Office Action dated March 20, 1991; Amendment and Response dated September 23, 1981; Office Action dated

U.S. Patent No. 5,147,868	Claims at Issue	MERCK		RANBAXY	
		CONSTRUCTION	INTRINSIC EVIDENCE	CONSTRUCTION	INTRINSIC EVIDENCE
					December 9, 1991; Application Ser. No. 07/839,725: Preliminary Amendment and Response dated Feb. 19, 1992; Examiner Interview Summary dated March 30, 1992; Notice of Allowability dated March 30, 1992.
7-(L-2-amino-2- carboxyethylthio)- 2-(2,2- dimethylcyclo- propanecarbox- amido)-2-heptenoic acid	19	This term means "the free acid, ester and salt forms of 7-(L-2-amino- 2-carboxyethylthio)-2- (2,2-dimethylcyclo- propanecarboxamido)-2- heptenoic acid."	'868 Patent, col. 5, lns. 11-19; col. 8, ln. 42-col. 9, ln. 45; col. 10, lns. 25-44; col. 19, lns. 35- 67; col. 20, ln. 35-col. 23 ln. 23; col. 34, lns. 9- 68; col. 38, lns. 9-66 (Claim 1); col. 39, lns. 19-35 (Claim 9); col. 40, lns. 21-25 (Claims 19- 20).	the free acid form of 7- (L-2-amino-2- carboxyethylthio)-2- (2,2-dimethylcyclo- propanecarboxamido)-2- heptenoic acid, excluding a pharmaceutically acceptable cation,  the free acid form including the (S)-(2,2- dimethylcyclo- propanecarboxamido) form, the (R)-(2,2-	'868 patent 1:60-5:6, 5:11-19; 2:18-5:10, Table I, cols. 11-20 , Claims 1, 9, 19 and 20.   '868 patent, 2:18-5:10; Table I, cols. 11-20; Claims 1, 9, 19 and 20; Application Ser. No.

U.S. Patent No. 5,147,868	Claims at Issue	MERCK		RANBAXY	
		CONSTRUCTION	INTRINSIC EVIDENCE	CONSTRUCTION	INTRINSIC EVIDENCE
				dimethylcyclo- propanecarboxamido) form, and mixtures thereof.	06/465,577: Office Action dated February 24, 1984; Response under 37 C.F.R. §1.111 dated July 7, 1984; Office Action dated December 4, 1984; Application Ser. No. 06/748,300, Office Action of February 24, 1985, Amendment dated May 15, 1986, Communication to the Examiner under 37 C.F.R. §1.56, dated June 5, 1986; Ashton, <i>et al.</i> Abstract no. 271 and “poster session,” (ICAAAC) Sept. 22-24, 1980; Application Ser. No. 06/878,391: Office Action dated Nov. 6, 1986; Amendment under 37 C.F.R. §1.116 received April 6, 1987; J. E. Blackwood et al., <i>J. Am. Chem. Soc.</i> , 90, p.

U.S. Patent No. 5,147,868	Claims at Issue	MERCK		RANBAXY	
		CONSTRUCTION	INTRINSIC EVIDENCE	CONSTRUCTION	INTRINSIC EVIDENCE
					509 (1968); A. Srinavasan et al. <i>Tetrahedron Lett.</i> , 891 (1976).
the sodium, potassium calcium or magnesium salt form	20	<p>This term needs no construction.</p> <p>This term means “the sodium, potassium, calcium, or magnesium salt form.”</p>	<p>'868 Patent, col. 5, lns. 11-19; col. 8, ln. 42-col. 9, ln. 45; col. 10, lns. 25-44; col. 19, lns. 35-67; col. 20, ln. 35-col. 23 ln. 23; col. 34, lns. 9-68; col. 38, lns. 9-66 (Claim 1); col. 39, lns. 19-35 (Claim 9); col. 40, lns. 3-8 (Claims 13-14); col. 40, lns. 21-25 (Claims 19-20).</p>	<p>the sodium, potassium calcium or magnesium salt form, excluding the free acid form.</p>	<p>'868 patent 1:60-5:6, 5:11-19; 2:18-5:10, Table I, cols. 11-20, Claims 1, 9, 19 and 20.</p>
$R^2$	22	<p>“<math>R^2</math>” needs no construction. The claim defines “<math>R^2</math>” to mean:</p> <p>“cycloalkyl of three to six carbon atoms substituted by two alkyl substituents of one to three carbon atoms each, with the proviso that <math>R^2</math> cannot contain more</p>	<p>'868 patent, col. 40, lns. 28-33 (Claim 22).</p>	<p><math>R^2</math> includes at least:</p> <p>cyclopropyl substituted by two substituents of one, two, or three carbon atoms each;</p> <p>cyclobutyl substituted by two substituents of one, two, or three carbon atoms each;</p>	<p>not defined (<i>cf.</i> '868 patent, 1:60-5:6, cols. 11-20 (Table I), Examples 1-23; Claims 1-22).</p> <p>Application Ser. No. 06/878,391: Office Action dated Nov. 6, 1986; Amendment under 37 C.F.R. §1. 116 received April 6, 1987;</p>

U.S. Patent No. 5,147,868	Claims at Issue	MERCK		RANBAXY	
		CONSTRUCTION	INTRINSIC EVIDENCE	CONSTRUCTION	INTRINSIC EVIDENCE
		than ten carbon atoms."		cyclopentyl substituted by one substituent of one, two, or three carbon atoms and by one substituent of one or two carbon atoms; and cyclohexyl substituted by one substituent of one, two, or three carbon atoms and by one substituent of one carbon atom, or cyclohexyl substituted by one substituent of one or two carbon atoms and by one substituent of one or two carbon atoms.	Office Action dated July 24, 1987; Amendment under 37 C.F.R. §1.116 dated Oct. 30, 1987; Office Action dated February 7, 1988; Amendment under 37 C.F.R. §1.116 dated May 24, 1988; Application Ser. No. 07/244,527: Preliminary Amendment dated January 23, 1989; Office Action dated March 14, 1990; Amendment dated August 6, 1980; Office Action dated October 12, 1990; Application Ser. No. 07/641,317: Preliminary Amendment dated Jan. 14, 1991; Office Action dated March 20, 1991; Amendment and Response dated September 23, 1981;

U.S. Patent No. 5,147,868	Claims at Issue	MERCK		RANBAXY	
		CONSTRUCTION	INTRINSIC EVIDENCE	CONSTRUCTION	INTRINSIC EVIDENCE
					Office Action dated December 9, 1991;  Application Ser. No. 07/839,725: Preliminary Amendment and Response dated Feb. 19, 1992; Examiner Interview Summary dated March 30, 1992; Notice of Allowability dated March 30, 1992.

1332743